

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JILREAN R. (KRESS) BO COOK,)
)
 Claimant,)
)
 v.)
)
 ELKINS ON PRIEST LAKE, LLC,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 02-505503

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

Filed
October 4, 2004

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Robert D. Barclay, who conducted a hearing in Sandpoint on June 8, 2004. Claimant was present in person and represented by Joseph E. Jarzabek of Sandpoint; Defendants were represented by Paul J. Augustine of Boise. The parties presented oral and documentary evidence. This matter was then continued for the submission of briefs, and subsequently came under advisement on September 14, 2004. There were no post-hearing depositions.

BACKGROUND

On August 4, 2004, the parties filed a Stipulation with the Commission in which Claimant withdrew her Motion to Dismiss Without Prejudice, and Defendants withdrew their objection to the admission of Claimant's Exhibit 15. Claimant's Motion was made at hearing in response to Defendants' objection to the admission of her Exhibit 15. Exhibit 15 is part of the record.

ISSUES

The noticed issues to be resolved as a result of the hearing are:

1. Whether Claimant suffered a compensable occupational disease;
2. Whether Claimant is entitled to reasonable and necessary medical care as provided for by Idaho Code § 72-432, and the extent thereof; and,
3. Whether Claimant is entitled to temporary partial and/or temporary total disability (TPD/TTD) benefits, and the extent thereof.

The remaining noticed issues were withdrawn at hearing. *See*, Transcript p. 12.

ARGUMENTS OF THE PARTIES

Claimant argues she did not have any problems with her upper left extremity prior to working for Employer, that her work with Employer required extensive, repetitive use of her upper extremities, and that her work resulted in a compensable occupational disease. She seeks the payment of her outstanding medical bill and time-loss benefits from March 12, 2002, through September 17, 2002, the period she was restricted from working.

Defendants counter Claimant has not presented any competent medical testimony, to a reasonable degree of medical probability, that demonstrates she has suffered an occupational disease which was actually incurred in or arose out of her employment. They further argue all of Claimant's medical records establish she has no verifiable injury, and that she is exaggerating her symptoms.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

Defendants also argue Claimant has failed to prove she is entitled to any further medical benefits as the only bills she had submitted to the Commission were either paid or involved treatment of her heart condition which is unrelated to her alleged occupational disease, and that even if her claim is found to be compensable, she would only be entitled to time-loss benefits from March 19, 2002, to May 14, 2002, based on the medical restrictions given by her treating physicians.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Employer, Sharon V. Davis, taken at the June 8, 2004, hearing;
2. Claimant's Exhibits 1 through 15 admitted at hearing;
3. Defendants' Exhibits A through C admitted at hearing;
4. The deposition of Sharon V. Davis, with Exhibit 1, taken by Claimant on July 14, 2003; and,
5. The deposition of Claimant taken by Defendants on July 14, 2003.

After having fully considered all of the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant began working at Employer's mountain lake resort on June 5, 2001, as one of three full-time housekeepers. She was paid \$7.00 per hour. In addition to cleaning guest cabins, Claimant also helped do laundry; clean the resort's lodge, restaurant, bar, and office; and prep food items in the restaurant. The resort is located on the western shore of Priest Lake.

2. Claimant began experiencing pain in her left hand, wrist, and forearm in mid-February 2002 while cleaning. She was left hand dominant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 3

3. Claimant went to the Dirne Community Health Clinic on March 12, 2002, complaining of pain and numbness in her left hand, wrist, and forearm. The impression was carpal tunnel syndrome (CTS). She was instructed to immobilize her left wrist, take pain relievers, and restricted from using her left hand and wrist. Claimant began wearing a wrist splint. Dirne Community Health is a free clinic in Coeur d'Alene.

4. Claimant notified Employer on March 13, 2002, about her medical condition and provided the medical release from the Dirne Clinic. Employer notified Surety who in turn filed a Form 1 with the Commission.

5. Claimant returned to Dirne on March 19, 2002. A diagnosis of left CTS was made and Claimant was restricted from working until she was evaluated by a specialist.

6. At Surety's request, Claimant saw J. Craig Stevens, M.D., at Bonner General Hospital in Sandpoint for an independent medical evaluation (IME). He opined Claimant's symptoms were only partially consistent with CTS, and that some symptoms were consistent with tendinitis of the wrist. Dr. Stevens recommended electrodiagnostic studies of the left hand to confirm or refute a CTS diagnosis; he continued her left arm work restrictions. Dr. Stevens opined if CTS was found by the study, it would be work-related.

7. Employer was unable to accommodate Claimant with her work restriction. She has not worked since.

8. Dr. Stevens conducted an EMG and nerve conduction studies of Claimant's upper left extremity on May 14, 2002. The tests were normal. Dr. Stevens noted he was unable to provide any alternative explanation of Claimant's symptoms, that all he had was her subjective complaints of pain, and that he could not in any way prove that her condition is not entirely one of secondary gain.

9. Surety paid for Claimant's two visits to Dr. Stevens and his testing.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4

10. Citing a failure to establish a causal relationship between Claimant's medical condition and her employment, Surety denied her claim for compensation on April 19, 2002.

11. Claimant saw Charles R. Falter, M.D., in Priest River on August 28, 2002, for a disability determination. He noted left wrist x-rays were within normal limits and negative. Dr. Falter opined Claimant's complaints of left wrist and arm pain were of an unknown etiology, and that she had an over-exaggeration of symptoms.

12. At her attorney's request, Claimant saw John M. McNulty, M.D., at Benewah Community Hospital in St. Maries on June 1, 2004, for an IME. After reviewing chart notes from Dr. Stevens and Dr. Falter, and taking a history from Claimant, he diagnosed chronic upper left extremity pain of unknown etiology. Dr. McNulty further noted Claimant had made significant improvement in her symptoms, and opined she was medically stable, could have returned to work after Dr. Falter's examination, and did not have any permanent injury or impairment related to her work at Employer's resort. He restricted her from lifting over 25 pounds with her left arm and told her to avoid the repetitive use of her left arm.

13. Claimant is currently attending college and studying computer science and business.

DISCUSSION

The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 793 P.2d 187 (1990). The humane purposes which it serves leaves no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 910 P.2d 759 (1996).

1. **Occupational Disease.** The Idaho Workers' Compensation Law defines an "occupational disease" as "a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 5

employment,” Idaho Code § 72-102 (21) (a). The Law further provides that “[w]hen an employee of an employer suffers an occupational disease and is thereby disabled from performing his [or her] work in the last occupation in which he [or she] was injuriously exposed to the hazards of such disease, . . . and the disease was due to the nature of an occupation or process in which he [or she] was employed within the period previous to his [or her] disablement as hereinafter limited, the employee, . . . shall be entitled to compensation.” Idaho Code § 72-437. “Disablement” means “the event of an employee’s becoming actually and totally incapacitated because of an occupational disease from performing his [or her] work in the last occupation in which injuriously exposed to the hazards of such disease,” and “disability means the state of being so incapacitated.” Idaho Code § 72-102 (21) (c). Idaho Code § 72-439 (1) limits the liability of an employer for any compensation for an occupational disease to cases where “such disease is actually incurred in the employer’s employment.” Idaho Code § 72-439 (2) further limits the liability of an employer for any compensation for a nonacute occupational disease to cases where “the employee was exposed to the hazard of such disease for a period of 60 days for the same employer.” Idaho Code § 72-439 (3) also provides, that “[w]here compensation is payable for an occupational disease, the employer, or the surety on the risk for employer, in whose employment the employee was last injuriously exposed to the hazard of such disease, shall be liable therefor.”

Thus, under the statutory scheme, a claimant must demonstrate (1) that they are afflicted by a disease; (2) that the hazards of the disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment in which they were engaged; (3) that they were exposed to the hazards of the nonacute disease for a period of 60 days with the same employer; (4) that the disease was incurred in, or arose out of and in the course of their employment, and (5) that as a consequence of the disease, they become actually and totally incapacitated from performing their

work in the last occupation in which they were injuriously exposed to the hazards of the disease. In addition, a claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 890 P.2d 732 (1995). “Probable” is defined as “having more evidence for than against.” *Fisher v. Bunker Hill Co.*, 96 Idaho 341, 528 P.2d 903 (1974).

The burden is on Claimant to provide medical testimony to support her claim for compensation. She has not done so. The opinions of Drs. Stevens, Falter, and McNulty do not provide the requisite causal relationship. The notes from the Dirne Clinic are of little value because they are handwritten, and it cannot be determined who signed them or their qualifications. Consequently, the Referee concludes Claimant has not incurred a compensable occupational disease.

2. **Other Issues.** Based on the above finding, the Referee further concludes the issues of medical and time-loss benefits are moot.

CONCLUSIONS OF LAW

1. Claimant has not incurred a compensable occupational disease.
2. The issues of medical and time-loss benefits are moot.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends the Commission adopt such findings and conclusions as its own, and issue an appropriate final order.

DATED This 20th day of September, 2004.

INDUSTRIAL COMMISSION

/s/

Robert D. Barclay
Chief Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2004, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

JOSEPH E JARZABEK
ELSAESSER JARZABEK ANDERSON MARKS ELLIOT & McHUGH CHRD
PO BOX 1049
SANDPOINT ID 83864-1049

PAUL J AUGUSTINE
BATT & FISHER LLP
PO BOX 1308
BOISE ID 83701-1308

kkcr

/s/ _____